

(2010) 04 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition No's. 5749 and 5750 of 2010

Richfield Constructions Private Limited

APPELLANT

Vs

Smt. Rukmaniamma and Others

RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Citation : (2011) 1 KarLJ 707 : (2011) 4 KCCR 3061

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : S.N. Aswathanarayan, for the Appellant; Sriyuths B.R. Prasanna, for Ram Bhat and Sreepada Associates and Jagdeesh D. Hiremath, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—Petitioner is aggrieved by the order passed by the learned Principal District Judge, Bangalore Rural District, Bangalore, in Misc. Appeal Nos. 6 and 7 of 2010; dismissing the appeals filed by the Petitioner herein and affirming the order passed by the Trial Court granting an order of temporary injunction restraining the Defendant-Petitioner herein from alienating the suit schedule property till the disposal of the suit.

2. The suit is filed by the Plaintiffs/Respondents 1 to 3 herein seeking partition and separate possession of the suit schedule property bearing Survey No. 86/2, measuring 1 acre 11 guntas, situated at Avadadenhalli Village, Kasaba Hobli, Anekal, Bangalore District. Both the Courts below have found that the Plaintiffs have made out a prima facie case for grant of an order of temporary injunction and the balance of convenience was in their favour. The main reason for the Courts below to come to this conclusion is that the suit being one for partition there is serious question to be tried and until the shares of the parties are determined, the suit property is to be maintained in status quo as any alienation or encumbrance will create complications.

3. It is seen from the materials on record including the impugned orders that the entire land is converted and sites are formed in the approved layout. The Petitioner herein is a purchaser of the property and has invested huge amount for development and formation of sites. The Petitioner has filed an undertaking by way of an affidavit dated 11-3-2010 enclosing a copy of the approved layout plan stating that he will set apart an extent of 5,425 sq. feet of area comprising in Site Nos. 1, 2, 21 and 22 as shown in the sanctioned plan enclosed to the affidavit, located in a contiguous area, towards the alleged 1/6th share of the Plaintiffs-Respondents herein. In fact, it is stated in the affidavit that after giving margin to the land utilized for formation of roads and other amenities, the 1/6th share in the developed area only comes to around 4,950/- sq. feet. However, to put at rest the controversy that has arisen out of the interim orders now passed by the Courts below he is willing to set apart an extent of 5,425 sq. feet in the 4 sites mentioned above. The Plaintiffs/Respondents are not satisfied with this undertaking.

4. Counsel for the Respondents submits that the development is made without permission of the Court and at the risk of the Defendant/Petitioner and therefore they are not entitled for such an order.

5. It is seen that the suit was filed in the year 2007 and the sale in favour of the Petitioner is made on 5-8-2006 for valuable consideration and thereafter the Petitioner has developed this land by investing huge sums of money. It is highly inequitable now to prevent the Petitioner from proceeding with the further development of the sites and putting them to use. As long as the interest of the Plaintiffs/Respondents can be protected by setting apart a portion of the developed land, so as to satisfy their shares, in the event of their success in the suit, there is no reason why the Petitioner who has purchased the land, made such huge investment be restrained from dealing with the rest of the developed property. The undertaking given by the Petitioner is just and equitable. It will safeguard the interest of the Plaintiffs/Respondents, as they will be entitled to get developed sites in lieu of their share in the agricultural land. In the layout map enclosed to the undertaking contiguous sites bearing Nos. 1, 2, 21 and 22 are agreed to be earmarked. During the course of arguments, on the suggestions made by the Counsel for the Respondents, the Counsel for the Petitioner has agreed to set apart site No. 20 also. This again shows the fair and just conduct on the part of the Defendant-Petitioner. In the light of the above an equitable order deserves to be passed to protect the interest of both parties.

6. Therefore, these writ petitions are allowed. The impugned order is set aside. The Defendant/Petitioner is directed not to, in any manner, encumber or alienate the sites bearing Nos. 1, 2, 20, 21 and 22 formed in the layout as reflected in the layout plan produced along with affidavit undertaking dated 11-3-2010 submitted to the Court. It is made clear that in respect of the other sites, the Petitioner is at liberty to deal with the same.